

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of**

|  |          |                             |
|--|----------|-----------------------------|
| <b>Streamlining Deployment of Small Cell</b> | <b>)</b> | <b>WT Docket No. 16-421</b> |
| <b>Infrastructure by Improving Wireless</b>  | <b>)</b> |                             |
| <b>Facilities Siting Policies;</b>           | <b>)</b> |                             |
| <b>Mobilitie, LLC Petition for</b>           | <b>)</b> |                             |
| <b>Declaratory Ruling</b>                    | <b>)</b> |                             |

**COMMENTS OF SPRINT CORPORATION**

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March 8, 2017

## Table of Contents

|      |   |    |
|------|---|----|
| I.   | Background.....   | 1  |
| A.   | Data Usage is Exploding.....  | 3  |
| B.   | The Only Solution to Exploding Growth in Data Demand is Densification .....   | 4  |
| C.   | Three-Legged Stool .....  | 5  |
| D.   | Small Cell Technology Primer .....  | 6  |
| II.  | Legal Background.....   | 8  |
| A.   | Congress Has Already Made Clear that the FCC Must Act to Accelerate Infrastructure Deployment.....                      | 8  |
| B.   | FCC Must Update Standards to Keep Pace with Technological Change .....  | 9  |
| 1.   | 2009 Shot Clock Order .....   | 9  |
| 2.   | 2014 Infrastructure Order .....   | 10 |
| C.   | Mobilitie Petition and Public Notice .....  | 12 |
| III. | Specific Deployment Hurdles and Barriers .....  | 13 |
| A.   | Access to Rights of Way.....  | 13 |
| 1.   | Total Exclusions .....  | 14 |
| 2.   | Moratoriums .....   | 17 |
| 3.   | Discrimination .....  | 20 |
| 4.   | Undergrounding Requirements.....  | 21 |
| 5.   | Siting Requirements that Question Network Design.....   | 21 |
| B.   | Excessive Permitting and Usage Fees Violate Section 253.....  | 23 |
| 1.   | Excessive Application or Right of Way Usage Fees.....   | 24 |
| 2.   | Franchise or Gross Revenue Fees.....  | 26 |
| 3.   | Unlawful Discrimination .....   | 27 |
| C.   | Excessive Delays .....  | 28 |
| D.   | Unlawful consideration of RF issues .....   | 30 |
| IV.  | Sprint’s Proposed Solution to Excessive Infrastructure Fees, Delays, and Inability to Access Public Rights of Way ..... | 31 |
| A.   | The Commission Should Adopt Mobilitie’s Proposals .....   | 32 |
| 1.   | Fair and Reasonable—Direct and Actual Costs is Proper Standard.....   | 32 |
| 2.   | Nondiscriminatory .....   | 35 |
| 3.   | Public Disclosure.....  | 35 |
| B.   | Nationwide Standards Under 332 .....  | 36 |
| 1.   | Highlights of Sprint’s Reform Proposal .....  | 36 |
| 2.   | FCC Should Acknowledge These Legislative Provisions as the Best   |    |

|   |    |
|---|----|
| Interpretations of 253 and 332 .....                    | 42 |
| C. Responses to Other FCC Proposals and Questions ..... | 43 |
| 1. Batching.....  | 43 |
| V. Other Infrastructure Deployment Barriers.....        | 44 |
| A. Tribal Historic Review Costs.....                    | 44 |
| B. NEPA .....   | 47 |
| VI. Conclusion.....                                     | 48 |

## **Executive Summary**

For many years industry commentators and regulators have said that small cell deployments are “in the near future” or “coming next year.” That is no longer true. Carriers are actively deploying small cell and distributed antenna systems (“DAS”) today. Sprint has activated small cell sites across the nation and is in the process of deploying tens of thousands of additional small cells to further densify its network. This massive network densification will deliver jobs to the American economy and vastly improved services to consumers. Unfortunately, antiquated regulatory and bureaucratic hurdles are slowing the pace of this deployment and diverting millions of dollars away from critical infrastructure investment.

Lack of access to right of way structures, excessive fees, and untenable processes and delays from local governments for permitting and installing small cells have become a major barrier to investment in the mobile economy. Sprint’s current small cell deployment data demonstrate that local permitting and tribal historic review fees are needlessly increasing the cost of each new site. In some cases these permitting and review fees exceed the costs of the small cell hardware, support structure, installation, backhaul, and power combined. Likewise, formal or informal moratoriums and lengthy review processes have extended the time needed for deployment by many months, and in some cases, more than a year.

To address these issues, the Commission should issue a Declaratory Ruling stating that: (1) carriers and infrastructure companies have a right under Section 253(a) to access public rights of way and vertical structures such as light poles owned by state or local government to deploy small cells and that a state or local government’s failure to provide such access, either directly by legal requirement or indirectly through delay or inaction, has the inherent effect of prohibiting the provision of service; (2) a state or local government may charge no more than the direct and

actual costs of processing an application or for maintaining the right of way and may not assess fees based on gross revenues or numbers of customers; and (3) failure to process an application within the shot clock period results in a “deemed granted” approval of the application. Sprint outlines below the details regarding how this should be implemented and why Sections 253 332(c), and 706(a) support the Commission’s authority—in fact, obligation—to act.

In addition to the steps listed above to lower fees and minimize delays caused by state and local governments, the Commission also must revisit burdensome obligations under the National Environmental Protection Act (“NEPA”) and the tribal historic review process under the National Historic Preservation Act (“NHPA”) that impose unreasonable costs on small cell deployment with minimal to nonexistent benefits. In the last decade, Sprint has spent millions of dollars on environmental review fees and tribal historic consultation fees, and not in a single instance has Sprint received a determination that its antenna deployment would have a significant environmental impact under NEPA or that it would have an adverse effect on an Historic Property protected by the NHPA.

In these comments, Sprint presents real world examples and data from its ongoing network build. The Commission need not rely on hypotheticals and projections; Sprint will show how burdensome local government permitting regulations and fees are having a direct impact on small cell deployment.

For example, one Western city imposes a \$9,500 application fee per site. An adjacent jurisdiction—while not being a model of reasonable fees and processes—imposes considerably lower fees of \$350 per application and \$742 per year. As a direct result, residents of the jurisdiction with lower fees and a streamlined process are now enjoying the increased coverage and speed benefits of more than 100 small cells with hundreds more already approved, while

mobile users in the high-fee areas of the jurisdiction next door continue to wait.

Not all cities have been obstructionist. New York City has responded to the broadband connectivity needs of its residents and has adopted a streamlined application process to attach small cells to city-owned infrastructure, such as light poles and traffic signals. As a direct result, Sprint has installed almost 200 small cells and dramatically improved data speeds across Manhattan, and it and the rest of the city will soon be the focus of thousands of additional small cell deployments.

As with the issues presented by state and local governments, Sprint also provides evidence of the burdens imposed by NEPA and NHPA. For example, Sprint's deployment in Houston before the Super Bowl earlier this year reveals the broken tribal historic review process under Section 106 of NHPA. When the stadium was built 17 years ago, there was no obligation for the stadium builders to conduct a tribal historic review, either under federal or state law. But when Sprint deployed 23 small cells on utility poles around the stadium area to upgrade its network in advance of the Super Bowl, FCC rules required Sprint to consult with all Native American tribes that expressed an interest in the project. A dozen tribes demanded a total of \$7,535 per pole, or \$173,305 for these 23 sites. There was no finding by the tribes that installing a utility pole in a 16" hole in a parking lot or sidewalk near an existing stadium would adversely affect an Historic Property. These regulatory burdens are diverting capital away from deployment without any corresponding benefit and should be reformed.

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**COMMENTS OF SPRINT CORPORATION**

**I. Background**

The Commission has acknowledged the importance of infrastructure reform. All three current Commissioners have spoken of the need to reform infrastructure policies, including the need to preempt state or local regulations that prohibit or have the effect of prohibiting the ability of a wireless carrier to provide service.<sup>1</sup> The Public Notice in this docket also recognizes the

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<sup>1</sup> “[T]he FCC must aggressively use its statutory authority to ensure that local governments don’t stand in the way of broadband deployment. In section 253 of the Communications Act, for example, Congress gave the Commission the express authority to preempt any state or local regulation that prohibits or has the effect of prohibiting the ability of any entity to provide wired or wireless service.” Remarks of FCC Commissioner Ajit Pai, “A Digital Empowerment Agenda,” Sept. 13, 2016, (“Pai Speech”) at 7.

Commissioners O’Rielly and Clyburn have made similar statements addressing the urgent need to reform infrastructure siting regulations. Commissioner O’Rielly issued a statement last fall: “The Commission’s work on wireless infrastructure does not end here, and I will continue my push to stop any inappropriate practices by those localities and governmental entities preventing wireless technology, especially broadband, from reaching Americans.” Statement of Commissioner Michael O’Rielly on the Amendment to the Nationwide Programmatic

need for immediate reform.<sup>2</sup> Now is the time to put those words into decisive action to accelerate the deployment of mobile broadband services to American consumers.

Infrastructure reform must begin now. Sprint is deploying now. Sprint's data from its ongoing deployment shows the most critical areas for immediate action. This policy discussion on small cell infrastructure can be informed by real data and examples, and not just hypothetical discussions about what could happen. Sprint's deployment will continue and Sprint will continue to invest, but onerous fees and lengthy delays mean that more of Sprint's customers could be enjoying greater capacity, better coverage, and faster speeds today if these burdens were removed.

The United States is in danger of falling behind the rest of the world in small cell

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Agreement to Facilitate Small Cell/DAS Deployment, Aug. 8, 2016.

Commissioner Clyburn testified before Congress in March 2016 about the need for wireless carriers to have access to necessary infrastructure, stating: "This vision of the promise of 5G is clear, but to get there, we need to ensure that commercial wireless companies have adequate spectrum and the necessary infrastructure, such as site antenna towers and base stations, to deploy that spectrum." Testimony of Commissioner Mignon L. Clyburn Before the United States House Of Representatives Committee on Energy & Commerce Subcommittee on Communications & Technology "Oversight of the Federal Communications Commission" March 22, 2016. In a separate address, Commissioner Clyburn emphasized the need for infrastructure deployment to be at the "lowest cost and quickest pace." Keynote Remarks of Commissioner Mignon L. Clyburn, #Solutions2020 Policy Forum, Oct. 19, 2016.

<sup>2</sup> Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling, Public Notice, WT Docket No. 16-421 (WTB 2016) ("Public Notice"). Unfortunately, local governments have been trying to slow down this docket by filing a request for two more months just to comment on the issue, just as many have stonewalled wireless carriers and infrastructure companies in their push to deploy small cells. The National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National League of Cities, the Government Finance Officers Association, the International Municipal Lawyers Association and the National Association of Counties, Motion for Extension of Time, WT Docket No. 16-421 (filed January 5, 2017).



deployment, and, consequently, in the deployment of 5G services. The Commission has recognized the need for the United States to lead the world in 5G deployment, and so long as fees in the United States dramatically exceed those in other nations, that leadership is threatened. Other nations have much lower fees and simpler processes for small cell deployment.

A number of countries around the world have lowered the cost of deployment and simplified their procedures for the review and approval of small cell sites. For example, the European Union in September 2016 proposed regulations to ease small cell deployment under the new European Electronic Communication Code. France reduced the declarations needed prior to the building of low power small cell base stations, and since March 2016 has reduced the annual site tax by 90 percent for those low power base stations. Similarly, Italy simplified its procedure for implementing new small antennas sites, requiring only a simple communication to the Municipality and Regional Environmental Authority. Germany requires no approvals for low power cell sites, and no building permits for towers of less than 10 meters. In the Netherlands, there are simplified procedures and no license fees for small antenna masts up to 5 meters, while in the United Kingdom, there is only a simple declaration 56 days prior to installation for small cells, with no required application for prior approval. Finally, in Malaysia low power transmitters are classified as inherently compliant, and no permit is required for low-impact facilities.<sup>3</sup>

**A. Data Usage is Exploding**

Data use by wireless users continues to explode. Industry data shows that mobile data use

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<sup>3</sup> These requirements are reported in *Small cell siting: regulatory and deployment considerations*, Document No. 190.08.02, released December 2016, available at [http://www.5gamericas.org/files/7714/8193/0832/SCF190\\_Small\\_cell\\_siting-final.pdf](http://www.5gamericas.org/files/7714/8193/0832/SCF190_Small_cell_siting-final.pdf).

increased by 63 percent last year worldwide, and 18-fold over the last five years.<sup>4</sup> Cisco estimates that mobile traffic will increase seven-fold over the next five years.<sup>5</sup> The installation of small cells to offload traffic from macro sites and to provide customers with more capacity to post, Tweet, stream, and download is the most effective means of addressing this demand. The Super Bowl represents an excellent example of this principle. Sprint installed 23 small cells around NRG Stadium in Houston in advance of the 2017 Super Bowl. Sprint customers used more than five terabytes of data inside and directly around NRG Stadium. Total data usage on the Sprint network increased more than three times compared to the 2016 Super Bowl and about eight times that of the 2015 Super Bowl.

**B. The Only Solution to Exploding Growth in Data Demand is Densification**

Carriers can add capacity by adding spectrum or by building additional antenna locations so that the same frequencies can be used by multiple sites to provide services to additional users. The infill of small cells to reuse the same frequency bands more often and in smaller areas is called densification. Although small cells do increase coverage, their main purpose is to increase overall capacity while using the same amount of spectrum. The FCC recently observed that “deploying ten small cells in a coverage area that could be served by a single macrocell could result in a tenfold increase in capacity while using the same quantity of spectrum.”<sup>6</sup>

Given that customer demand for speed and capacity cannot be met solely through macro

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<sup>4</sup> <http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.pdf>, at 1.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> Public Notice at 4.

cells, Sprint and other carriers must densify their networks in the next few years, both to augment their existing 4G networks and to deploy 5G. Sprint has begun a massive deployment of small cells to meet rising consumer demand. These cells are usually located on new and existing utility poles and other structures in the public rights of way such as traffic signals, and streetlights.

In the Public Notice, the FCC summarized publicly available information about carriers' small-cell deployment plans:

S&P Global Market Intelligence estimates that between 100,000 and 150,000 small cells will be constructed by the end of 2018, and that small cell deployments are expected to reach 455,000 by 2020 and nearly 800,000 by 2026. AT&T has reported that the substantial majority of its infrastructure deployments over the next five years will be small cell sites. In addition, Verizon is deploying small cells in several urban areas, including New York, Chicago, Atlanta, and San Francisco. Sprint announced last year a goal of deploying 70,000 small cells within two years.<sup>7</sup>

### **C. Three-Legged Stool**

The Commission's reform efforts on infrastructure siting must address all three barriers that wireless carriers face when dealing with state and local government permitting authorities:

1) access to public rights of way to place new poles and attach to existing structures; 2) reasonable fees for both applications and usage of the rights of way; and 3) timely action on access agreements and individual site permits. Without removal of all three barriers, rapid, economical infrastructure deployment is threatened. Many of these regulations and fees were created when carriers were deploying large macro cells that cost hundreds of thousands of dollars, and carriers could more readily justify waiting through the process, litigating adverse

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<sup>7</sup> Public Notice at 4-5.

decisions, and, if required, paying fees that were a much smaller share of the total cost of each site. The new infrastructure is radically different, however, and the old siting construct no longer applies. The cost per cell has dropped to the low tens of thousands of dollars and the number of sites needed has multiplied. Most importantly, the physical size and visual effect of deploying a small cell is dramatically less than traditional towers. In this environment, carriers cannot engage in a protracted regulatory struggle for each individual site. Given that all carriers face limited capital budgets, they are forced to limit the number and pace of their deployment investments to areas where the delays and impediments are the least onerous to the detriment of their customers and, ultimately and ironically, to the very jurisdictions that imposed obstacles in the first place.

#### **D. Small Cell Technology Primer**

Small cells are wireless base stations that have the same basic functionality as the familiar macro cells, but are much smaller physically and cover smaller geographic areas. They cover a radius of approximately ¼ mile, compared to the multi-mile radius of traditional macro cells. A traditional macro site consists of a tall support tower with numerous separate antennas mounted on top. The ground area is often fenced and contains one or more equipment cabinets.

In contrast, Sprint's small cells are small, prepackaged units approximately the size of a fire extinguisher that mount on a traditional utility pole, streetlight, traffic signal, or building with no additional equipment installed on the ground. Although FCC rules define a small cell as a pole-mounted antenna of no more than six cubic feet and other equipment no more than 21 cubic feet for a single installation,<sup>8</sup> in practice, Sprint's small cells are much smaller. A typical

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<sup>8</sup> 47 C.F.R. § 1.1307(a)(4). Amended Collocation Agreement § VI.5.b.ii.

small cell radio unit used by Sprint is approximately 20"x10"x10", or in other words smaller than the ubiquitous power transformers mounted on electric poles nationwide and similar in size to pole-mounted junction boxes for telecommunications. There may be a small antenna and one or two additional smaller pieces of equipment mounted on the pole to provide backhaul, as well as an electric meter.

Pictured below are two typical small cells, one mounted on a streetlight and the other on a new steel utility pole outside NRG Stadium in Houston, Texas (indicated by the red arrow):



Small cells are used for two primary reasons: to fill coverage gaps and to increase capacity. Small cells are not a replacement for macro cells. They are designed to work seamlessly by filling in small areas that receive poor coverage under traditional macro cell

architecture. But the primary driver of small cell deployment is to increase network capacity. Sprint's holdings of 2.5 GHz spectrum are ideal for small cell densification, but the laws of physics of wireless propagation dictate that they must be deployed differently than the low-band 700 and 800 MHz and mid-band 1.9 GHz frequencies used for the first three decades of mobile services in the United States. Future deployments of higher frequency spectrum will require even closer spacing to meet consumer demand.

## **II. Legal Background**

### **A. Congress Has Already Made Clear that the FCC Must Act to Accelerate Infrastructure Deployment**

The Congressional mandate to the FCC to remove barriers to infrastructure investment is unequivocal. Section 706(a) of the Telecommunications Act requires the FCC to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” by “other regulating methods that remove barriers to infrastructure investment.”<sup>9</sup>

Congress specifically authorized preemption to accomplish this goal. The Commission has an obligation under 47 U.S.C. § 253(a) and (d) to preempt any “State or local statute or regulation, or other State or local legal requirement [that has] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Section 253(c) requires the compensation for the use of the public rights-of-way to be “fair and reasonable” as well as “competitively neutral and nondiscriminatory,” and “publicly disclosed.” Failure to meet these standards is a violation of Section 253(a), which requires preemption under Section 253(d).

Additionally, Section 332(c)(7) imposes specific obligations on local governments when

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<sup>9</sup> Codified at 47 U.S.C. § 1302(a).

reviewing applications to place infrastructure. That section requires state and local land-use authorities to act on requests for authority to “place, construct, or modify personal wireless service facilities within a reasonable period of time” after such requests are filed. Moreover, it prevents local governments from regulating the placement, construction and modification of wireless facilities in a manner that discriminates among providers of functionally equivalent services or prohibits or has the effect of prohibiting the provision of personal wireless services.<sup>10</sup>

Finally, Section 6409(a) establishes that State and local governments “may not deny, and shall approve,” any “request for a modification of an existing wireless tower or base station that does not substantially change the [facility’s] physical dimensions.”

## **B. FCC Must Update Standards to Keep Pace with Technological Change**

The Commission has issued two primary orders on wireless infrastructure in furtherance of the Congressional mandate to accelerate broadband deployment, as well as an order last year to amend the Collocation Agreement. In 2009, the Commission instituted a “shot clock” to interpret the “reasonable period of time” requirement in Section 332(c)(7).<sup>11</sup> In 2014, the Commission issued an order on infrastructure siting that eased some requirements under NEPA and NHPA as well as clarifying issues about the shot clock. These orders have removed some of the barriers to deployment, but many remain.

### **1. 2009 Shot Clock Order**

The Commission’s 2009 Order had the laudable goal of putting teeth into the “reasonable

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<sup>10</sup> 47 U.S.C. § 332(c)(7)(B).

<sup>11</sup> *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order*, ¶¶ 265-66, 270-72 (2014) (“2014 Infrastructure Order”), *aff’d*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015).

period of time” language in Section 332(c)(7). Local governments, however, asked the Commission not to impose a “deemed granted” remedy for a municipality’s failure to act on an application within the time period. The Commission decided to prescribe a judicial remedy rather than the deemed granted remedy advocated by CTIA.<sup>12</sup> The shot clock order required local governments to act within 150 days on applications for new sites and within 90 days for applications to collocate on existing structures.<sup>13</sup> Failure to act, however, resulted only in the opportunity to bring litigation, a process that could take years.<sup>14</sup>

## **2. 2014 Infrastructure Order**

The 2014 Infrastructure Order addressed three main subjects relevant here: NEPA and NHPA exclusions, the remedy for violations of Section 6409, and the Commission’s experience with the shot clock under Section 332(c)(2) as to the completeness of applications.<sup>15</sup>

Given that small cells have dramatically lower environmental effects and adverse visual effects on Historic Properties, the 2014 Infrastructure Order created exemptions for small cells from certain regulatory requirements under NEPA and NHPA. Specifically, the order clarified the collocation exemption and created a new categorical exclusion under NEPA for deployments, including construction of new poles, in utility rights-of-way where the new structure does not

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<sup>12</sup> *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994, 14020, ¶ 39 (2009) (“2009 Declaratory Ruling”), *aff’d*, *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, 133 S. Ct. 1863 (2013).

<sup>13</sup> *Id.* ¶ 45.

<sup>14</sup> *Id.* ¶ 51.

<sup>15</sup> The Commission also discussed the requirements for temporary towers, an issue that Sprint does not revisit in these comments. 2014 Infrastructure Order ¶¶ 106-134.



constitute a substantial increase in size over the existing structures in the right of way.<sup>16</sup> The Commission added an exclusion from historic review under NHPA for certain types of small cell collocations on utility structures and on existing buildings for cells under a certain size and not located in or near historic districts.

The Commission interpreted Section 6409, which states that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”<sup>17</sup> The Commission established criteria for what constituted a substantial modification. Additionally, the Commission said that the “shall approve” language required a local government to approve an application within 60 days, or otherwise the application would be “deemed granted.”<sup>18</sup>

As to Section 332, the Commission established criteria determining when an application was to be considered complete, as well as the interplay between a local moratorium and the shot clock. Specifically, the Commission determined that the shot clock begins to run when the application is submitted, not when the municipality determines it to be complete, and that a determination of incompleteness only tolls the shot clock if the local government informs the applicant of the deficiencies within 30 days of submission.<sup>19</sup> The Commission also ruled that a

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<sup>16</sup> 2014 Infrastructure Order ¶¶ 57-70.

<sup>17</sup> 47 U.S.C. § 1455(a)(1).

<sup>18</sup> 2014 Infrastructure Order ¶¶ 135-242.

<sup>19</sup> *Id.* ¶¶ 243-284.

local moratorium on cell construction does not stop the running of the shot clock<sup>20</sup> and that the shot clock rules apply to small cells and DAS.<sup>21</sup>

Finally, in 2016, the Commission amended the Collocation Agreement to grant additional exemptions from NHPA review for collocated small cells.<sup>22</sup>

Each of these provisions were important steps forward. Carriers continue to face challenges, however. For example, companies that deploy infrastructure on behalf of carriers are not always permitted to apply these rights. The legal basis for establishing these exemptions apply equally to wireless infrastructure providers as well as to mobile carriers themselves. While some municipalities are treating infrastructure companies differently than carriers, differential treatment has no basis under the Act or the Commission's rules as infrastructure companies are vital entities in the deployment of small cell connectivity.

### **C. Mobilitie Petition and Public Notice**

On November 15, 2016, Mobilitie filed a Petition for Declaratory Ruling seeking a ruling from the Commission on three subjects: that “fair and reasonable” compensation under Section 253(c) means charges must be limited to the direct costs of managing applications and the rights of way, nothing more; 2) “competitively neutral and nondiscriminatory” means that charges cannot exceed those charged to other providers for similar access; and 3) the “publicly disclosed by such government” requirement means that the localities must make the charges public and

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<sup>20</sup> *Id.* ¶ 219.

<sup>21</sup> *Id.* ¶ 270.

<sup>22</sup> First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-16-900A2.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-16-900A2.pdf).

available to others.<sup>23</sup>

Sprint actively partners with Mobilitie in deploying Sprint's network, and many of the examples given here by Sprint are for applications and sites that Mobilitie has constructed or will construct for Sprint. Sprint supports Mobilitie's proposed Declaratory Ruling as appropriate and reasonable clarifications of the FCC's previous rulings. Sprint, however, emphasizes that there is more the FCC should do to encourage the deployment of advanced mobile services. As noted in the FCC's Public Notice of December 22, 2016, the FCC should also address delays under the 2009 shot clock order as well as access rights to local-government owned rights of way and infrastructure. The Commission must also address costly and burdensome NEPA, NHPA, and tribal historic review processes.

### **III. Specific Deployment Hurdles and Barriers**

To facilitate deployment of small cells, the Commission must address all three barriers imposed by local governments: access to rights of way, excessive fees, and long delays.

#### **A. Access to Rights of Way**

Section 253 of the Communications Act is clear: state and local government have an obligation to refrain from imposing barriers that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

Access to public rights of way is critical for the provision of any wireless service. Not only are the rights of way, by definition, along the roads and public spaces where mobile customers live, work, drive, and congregate and therefore most frequently use mobile services,

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<sup>23</sup> Mobilitie Petition at 1.

they are the obvious location for siting wireless infrastructure for many practical reasons. One such reason is that public right of way corridors often already have the three essential inputs necessary to install a wireless antenna: electricity, backhaul communications, and a siting location. The public rights of way typically have other poles and utility structures, such as traffic signals, streetlights, utility poles, traffic cameras, and overhead signs that are ideal spots for unobtrusively placing small cell equipment.

Some cities have restricted access in numerous ways, from outright prohibitions, to temporary bans while they “study” the “problem,” to regulatory hoops not required of legacy incumbent wireline providers. The Commission has an obligation under Sections 253(a) and 332(c)(7)(B) to preempt such obstacles when they have the effect of prohibiting wireless carriers from providing service or when discriminating among carriers.

#### **1. Total Exclusions**

Some municipalities have imposed total bans on the deployment of new poles for the siting of wireless small cells. While they allow new cells to go on existing support structures or buildings, they prohibit the installation of a new pole for a small cell—even in situations where no existing structure meets the needs of the carrier to provide service.

One Western city has imposed a total prohibition on any new attachments, not just new poles, in the public rights of way. All deployments are limited to attachments on buildings. A Southern city has prohibited new small cell poles in the right of way, though attachments to existing poles are permitted.

Two small Western cities have stated that they will not process applications until the FCC reaches a decision on siting issues. Four other Western jurisdictions are refraining from processing applications while their state legislature considers legislation. Two Western

transportation departments have delayed applications while they consider whether a carrier must deploy infrastructure directly or whether they can work with a third-party infrastructure company. One Mid-Atlantic transportation department has rejected requests to install small cell facilities in state-owned rights of way. A Western city is requiring that applicants waive federal rights under Section 332 of the Communications Act for administrative approval of small cells on certain poles.

Prohibitions like those mentioned above impose real burdens on wireless carriers, and, yes, they go so far as to have the effect of prohibiting service. The Public Notice explores the different standards espoused by the Circuit Courts of Appeals when interpreting this provision of Sections 253 and 332. Some circuits have “imposed a ‘heavy burden’ of proof to establish a lack of alternative feasible sites, requiring the applicant to show ‘not just that this application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try.’”<sup>24</sup> Other circuits have taken a less restrictive approach, requiring that an “applicant must show only that its proposed facilities are the ‘least intrusive means’ for filling a coverage gap in light of the aesthetic or other values that the local authority seeks to serve.”<sup>25</sup> The Public Notice asks if it should attempt to resolve the differences between the circuits on whether land use denials prohibit or have the effect of prohibiting personal wireless service.

From Sprint’s perspective, neither is the appropriate standard as both miss the mark. An

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<sup>24</sup> Public Notice at 9-10 (listing cases).

<sup>25</sup> *Id.* at 10 (listing cases).

outright ban on certain deployment locations has the effect of prohibiting service in many areas where use of the rights of way is the only way to provide service. To densify 4G networks today and in the 5G era to come, carriers will need tens of thousands of new locations to deploy the necessary capacity. Wireless carriers can no longer provide coverage maps, participate in extensive zoning hearings, and pay third-party consultants to produce a study about whether a small cell should be placed in one of ten potential locations in a locality. The reality is carriers will need small cells installed on right of way light poles or utility poles near most or all of those locations. Carriers are not attempting to fill a “coverage gap”; rather, the issue is filling capacity gaps. The old legal tests and coverage gaps simply no longer apply in a capacity-driven wireless world. Instead, the Commission should find that bans on the use of right of way structures categorically “prohibits or has the effect of prohibiting” personal wireless services. In the new world of placement of network assets for capacity densification, a Commission ruling redefining prohibition of service is necessary such that small cells must be permitted in right of way locations.

Some localities do not even have a process in place to accept and review applications. This is a direct violation of Section 253’s prohibition against actions that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Such a refusal to accept applications also constitutes a violation of Section 332(c)(7)(B)(ii), which forbids regulations that “prohibit or have the effect of prohibiting the provision of personal wireless services.”

The purpose of the public rights of way is to provide infrastructure that is in the public interest and infrastructure that the public wants and needs. No party challenges the premise that wireless capacity must be increased to meet the needs of the public. Use of the *public* rights of

way to meet these needs is completely consistent with purpose of the rights of way. If actual or predicted traffic volumes exceed the capacity of city streets, the public rights of way are used to accommodate the expanding traffic volumes. The same considerations must apply to communications infrastructure as well. The addition of a pole or the attachment of a 20"x10"x10" small cell box to an existing pole to meet the exponential growth in broadband need is an insignificant impact on the right of way.

## **2. Moratoriums**

The Commission has stated that moratoria on infrastructure deployment by local governments are “presumptively unreasonable” if they result in delays of more than 150 days for new sites or 90 days for collocations.<sup>26</sup> Additionally, moratoria do not affect the running of the shot clock.<sup>27</sup> The Commission found that these shot clock timeframes also apply to the siting of small cells.<sup>28</sup>

There are two types of moratoriums that interfere with small cell deployment. The first is a refusal to consider the use of the public rights of way and vertical structures in the rights of way for small cell deployment. The second is a refusal to act on permit applications for use of right-of-way structures for small cell deployment. The Commission’s shot clock order addressed the second issue, but did not directly address the first type of moratorium that is currently a larger barrier to deployment. Some municipalities stop short of an outright refusal to allow access to the public rights of way, but have dragged their feet for such a long time in establishing

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<sup>26</sup> 2014 Infrastructure Order ¶ 267.

<sup>27</sup> *Id.* ¶ 266.

<sup>28</sup> *Id.* ¶¶ 270-272.

a process that their actions have imposed a de facto moratorium on the use of the rights of way.

Despite the presumptive ban on moratoria, they continue. One Southern city, for example, has imposed a moratorium on new builds in the downtown area until it revises its standards for fees, designs, and deployment in underserved areas. This moratorium has continued for 18 months. In such a circumstance, the Commission's shot clock rules are wholly ineffective since that city has continued to discuss small cell siting but has not implemented a uniform policy and process. The alternative for a carrier wanting to deploy there is to drop out of negotiations and sue the city in federal court to enforce the shot clock rules. Litigation in federal court, however, directly undermines the ability of carriers to engage in negotiation of a reasonable implementing policy.

Below are additional official moratoriums that Sprint has encountered:

- One Midwestern jurisdiction issued a moratorium in October of 2016 for wireless and small cell/DAS telecommunications systems without an end date.
- One jurisdiction in the Midwest issued a moratorium in October of 2016 in order to adopt a new ordinance, the first reading is early March.
- A jurisdiction in the West passed a moratorium prohibiting the applications, permitting, placement, or development of any wireless telecommunications facilities.
- A jurisdiction in the West passed a moratorium prohibiting the applications, permitting, placement, or development of any wireless telecommunications facilities until August 7, 2017, allowing staff to develop an ordinance and amend current code.
- One jurisdiction in the South enacted a moratorium in 2014 that was supposed to end December 2016, but the new proposed timeline is mid-May 2017.
- One county in the South enacted a moratorium in September 2016 and has passed another resolution to extend the moratorium to March 2017.



- One jurisdiction in the South has enacted a moratorium in order to adopt a new ordinance that is set to expire March 2017.

In July 2016, a state department of transportation adopted a regulation that flatly prohibited new poles, towers, and monopoles in the rights of way controlled by the state DOT. The industry became aware of the regulation only after it had been adopted. Subsequently, the members of the industry entered into discussions with the state DOT, and as of this writing, the parties are hopeful that the state DOT will ultimately adopt a compromise regulation that allows for the construction of new wireless infrastructure in ROWs controlled by the DOT.

A de facto moratorium exists in a Mid-Atlantic county. Mobilitie began working with the county on behalf of Sprint in April 2016 to establish an agreement and process, but little progress has been made. The county continues to demand proof of the carrier's need to increase capacity or coverage. Mobilitie has been working for months to change the approval process, but without success. In the meantime, the infrastructure deployment burdens have become so great as to amount to a de facto moratorium. Here are additional "de facto" moratoriums:

- Two Midwest jurisdictions will not allow deployments in the ROW because they are not interested in such deployments.
- A city in the Southwest has a codified process for installing new telecommunications facilities, but staff has asserted they are not in favor of new poles. Furthermore, they have said that without at least 200 attachments sites, there was no financial incentive for the city to consider the proposed deployment.
- One Midwest jurisdiction simply rejected access to the ROW with a blanket statement that "wireless is not allowed".
- A city in the Midwest requested a large cash deposit before addressing an agreement, and then later refused to work with the company or discuss the proposed agreement.
- One jurisdiction in the West does not allow wireless facilities in the ROW.

- One jurisdiction in the Midwest continues to challenge access to the ROW and only allows carriers who obtain franchise agreements to deploy in the ROW.

The Commission should strengthen its ban on moratoriums by clarifying that if a local government is not accepting applications, whether for use of the public rights of way or merely to obtain permits to place sites on municipally owned poles or other structures, the shot clock nevertheless begins to run when the applicant submits the basic information about the proposed site, including proof of delivery, that is consistent with other jurisdictions that are accepting applications or previous submissions prior to the moratorium. Furthermore, as discussed elsewhere in these comments, a deemed granted remedy must be available to enforce the Commission's ban on moratoriums, whether official or de facto. Absent a strong remedy, the judicial process merely constitutes an extension of the moratorium, and if there is not even a process in place for the submission of applications to use the public rights of way, there is no way for a court to validate the rationale—or lack thereof—underlying a municipality's decision on an application.

### **3. Discrimination**

Local governments have also discriminated against some carriers in contravention of Section 253. One Mid-Atlantic city has an exclusive contract with one infrastructure provider that prohibits the city from approving installation of new poles from other carriers or infrastructure providers, as well as attachments to city-owned infrastructure. Other carriers are limited to attaching to existing infrastructure owned by third-parties. Other jurisdictions have adopted RFP bidding processes to deploy small cells in the right of way. Such a process closes down the right of way for small cell deployment until the RFP is granted and serves to limit the number of carriers that can deploy economically. The Commission must clarify that terms and

access made available to any telecommunications provider, whether telephone, cable, or wireless, must be available to all and, at a minimum, on the same terms. Anything short of this is a direct violation of the nondiscriminatory requirements of Section 253.

#### **4. Undergrounding Requirements**

Some municipalities have ordinances that require undergrounding of utility infrastructure for aesthetic or resiliency reasons. That may work for wireline telecommunications, electric, and gas lines, but wireless antennas cannot be placed underground. There is no way to avoid this truth of physics by regulatory fiat. While Sprint recognizes that many municipalities have engaged in expensive utility undergrounding programs, not all structures have been placed underground in these areas. Sprint has yet to encounter a below-ground traffic signal or streetlight, both of which are ideal hosts for a small cell. Sprint has no desire to place a new wooden utility pole in a downtown district where communications and electric service has been placed underground, but mobile carriers nevertheless need access to the structures that by their very function cannot be placed underground. The Commission should rule that municipalities have a process in place for undergrounding districts that allows carriers to access existing vertical structures and build new structures subject to the zoning approval process of the municipality. Wireless carriers recognize the issues of deploying new poles in these sensitive areas, but surely an undergrounding ordinance for other utilities should not effectively bar wireless carriers from accessing existing vertical structures for small cell deployment.

#### **5. Siting Requirements that Question Network Design**

Another problematic action by local governments is the imposition of siting requirements that question a carrier's network design. Such actions violate Section 253 because any local government action that prevents a technology upgrade has the effect of prohibiting the provision

of service.

Different technological standards and spectrum allocations require different antenna locations, heights, and spacing for different carriers. What worked for 2G may not work for 3G, 4G or 5G. What works for 800 MHz may not work at 2.5 GHz, and what works at 2.5 GHz may not work at the higher frequencies the Commission approved for mobile broadband use last year. If a carrier's antenna locations are frozen based on earlier network architectures, it cannot effectively provide service as technology changes.

Section 6409 doesn't help in this circumstance. While it allows for antenna or equipment upgrades at a particular location where there already are wireless facilities, it does not make it easier for carriers to install new wireless facilities, to relocate or reposition antennas to meet revised spectrum and radio needs, or to move cells to new locations based on the carrier's own evaluation of its network needs.

One Mid-Atlantic county—in addition to an onerous \$5,000 application fee—requires applicants to provide proof of the need to upgrade coverage or capacity. A proposed model ordinance by a consortium of cities in another state contains a similar provision. In California, 38 jurisdictions require propagation maps to prove the need for new infrastructure. Similar requirements exist in some jurisdictions in two Midwestern states.

Carriers plan their networks based on balancing the costs of installing or upgrading their facilities against the benefits of increasing coverage and capacity in certain areas at the expense of other areas. This type of economic evaluation is no different than what all businesses do. However, unlike all other businesses, some local governments insist on making wireless carriers justify their ordinary business decisions. Nobody asks Ford whether it really needs to make a new car model. But the jurisdictions mentioned above, for whatever reason, apparently think

Sprint would go to the trouble and expense of building new network architecture to provide increased coverage or capacity where it is not needed. Carriers have no incentive to place facilities where they are not needed, and the Commission should not countenance efforts by local government to impose requirements that substitute the government's planners for the carrier's.

**B. Excessive Permitting and Usage Fees Violate Section 253**

The high fees charged by municipalities—both application fees and usage fees—violate the requirements of Section 253(c) and 253(a). As explained in the National Broadband Plan, fees that are not based on the direct costs of processing applications or managing ROW conflict with the national public interest.

Fee structures should be consistent with the national policy of promoting greater broadband deployment. A fee structure based solely upon the market value of the land being used would not typically take into account the benefits that the public as a whole would receive from increased broadband deployment, particularly in unserved and underserved areas. In addition, broadband network construction often involves multiple jurisdictions. The timing of the process and fee calculations by one local government may not take into account the benefits that constituents in neighboring jurisdictions would receive from increased broadband deployment. The cost and social value of broadband cut across political boundaries; as a result, rights-of-way policies and best practices must reach across those boundaries and be developed with the broader public interest in mind.<sup>29</sup>

The comments below summarize three types of unreasonable fees by categorizing them as plainly excessive, unreasonable franchise or gross revenue fees, and unlawful discrimination compared to the fees charged to other users of the right of way.

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<sup>29</sup> See <http://www.broadband.gov/plan/6-infrastructure/>

## 1. Excessive Application or Right of Way Usage Fees

Although the Commission seeks systemic data,<sup>30</sup> the very nature of the problem makes systemic data difficult. The absence of a consistently applied national policy framework for small-cell siting has resulted in extremely wide variations in the structure and level of fees. Sprint has encountered one-time fees that range up to many-tens-of-thousands of dollars per application. Annual use fees range from zero to tens-of-thousands of dollars per site. Any averaging of these figures masks the worst offenders. Moreover, an averaging of currently incurred fees does not capture the fact that many jurisdictions have outrageous initial demands that Sprint and Mobilitie refuse to pay. Sometimes, there has been success in negotiating to a more reasonable fee arrangement, but in many circumstances, Sprint and Mobilitie have declined, for the time being, to enter into an agreement with the jurisdictions that insist on extremely high fees. As a result, an average of the fees paid by Sprint is lower than the average demanded if Sprint were to accede to every amount demanded by a state or local government. Nonetheless, in response to the Commission's request for data, the table below presents a small sample of types of excessive fees currently being imposed by jurisdictions across all regions of the country. The ensuing discussion then provides individual examples of some of the highest fees Sprint has encountered as it has deployed small cells.

| Region of City | Attach. Fee | New Pole Fee | Other Fee | Admin. Fee | Annual Fee |
|----------------|-------------|--------------|-----------|------------|------------|
| Mid-Atlantic   | \$ 5,000    | \$ -         | \$ -      | \$ 506     | \$ 5,000   |
| Midwest        | \$ 2,058    | \$ -         | \$ 1,580  | \$ 205     | \$ 3,638   |
| South          | \$ 2,000    | \$ 2,750     | \$ 900    | \$ -       | \$ 5,650   |
| West           | \$ 4,794    | \$ -         | \$ -      | \$ -       | \$ 4,794   |
| West           | \$ 3,573    | \$ 3,782     | \$ -      | \$ -       | \$ 7,355   |
| West           | \$ 7,210    | \$ -         | \$ -      | \$ -       | \$ 7,210   |
| West           | \$ 4,000    | \$ -         | \$ -      | \$ 250     | \$ 4,000   |
| West           | \$ 4,160    | \$ -         | \$ -      | \$ 8,400   | \$ 4,160   |
| Midwest        | \$ 3,000    | \$ -         | \$ -      | \$ -       | \$ 3,000   |

<sup>30</sup> Public Notice at 9.

|           |          |          |        |          |          |
|-----------|----------|----------|--------|----------|----------|
| Northeast | \$ 816   | \$ -     | \$ 738 | \$ 820   | \$ 1,554 |
| South     | \$ -     | \$ 1,500 | \$ -   | \$ 700   | \$ 1,500 |
| Midwest   | \$ 1,500 | \$ 1,500 | \$ -   | \$ -     | \$ 3,000 |
| West      | \$ 1,000 | \$ 500   | \$ -   | \$ -     | \$ 1,500 |
| West      | \$ 1,000 | \$ -     | \$ -   | \$ 118   | \$ 1,000 |
| West      | \$ 1,732 | \$ -     | \$ -   | \$ -     | \$ 1,732 |
| Midwest   | \$ 1,800 | \$ -     | \$ -   | \$ -     | \$ 1,800 |
| Midwest   | \$ -     | \$ 1,000 | \$ -   | \$ -     | \$ 1,000 |
| Northeast | \$ 699   | \$ -     | \$ 22  | \$ -     | \$ 721   |
| Midwest   | \$ 720   | \$ -     | \$ -   | \$ 4,000 | \$ 720   |

## **a) Specific Examples of High Fees**

### **(1) Application Fees**

Below are examples of unreasonable one-time upfront or application fees for small cell deployment. In the interest of preserving the ability to engage in further negotiation, Sprint has removed the name of the city but instead provided a general description by region:

- Midwestern suburban city: City demanded \$10,000 one-time fee to attach a small cell to a city-owned light pole, but ultimately changed position to \$3,000 per year per attachment.
- Mid-Atlantic urban county: \$5,000 application fee.
- North-East suburban city: One time initial administration fee of \$50,000. This fee is to establish the right to locate cells in the right of way. Each individual cell is at much lower cost, but the upfront fee is unreasonable standing alone given that in some jurisdictions, a carrier may not need to deploy enough sites to amortize the fee sufficiently to make it reasonable.
- Small Southern city: \$5,000 per application and \$8,000 escrow per permit.
- Large Southern city: \$5,000 one-time fee plus 5 percent of gross revenues plus \$1,300 per pole annual fee or \$700 per attachment.
- Large Western urban county: \$9,500 per location.

- Western suburban city: \$14,910 per location per application.
- Southern suburban city: City is requesting \$20,000 per site.

## (2) Annual Fees

Many local governments are also seeking exorbitant annual recurring fees for placing poles in the public rights of way or for attaching to municipal owned infrastructure.

- Mid-Atlantic Department of Transportation: Annual fee of \$24,000 per new pole and \$14,000 per attachment.
- Small Western city: \$14,400 per pole annually proposed by city.
- Western Department of Transportation: \$40,000 per year for macro cells in urban environments, and \$10,000 per year for small cells in urban environments.
- Western suburban city: \$8,400 annually to attach to city-owned streetlight.

## 2. Franchise or Gross Revenue Fees

Franchise fees are inherently unreasonable as they are unrelated to the costs of maintaining the right of way. A franchise fee imposes the same costs whether a carrier has one site or hundreds in the jurisdiction requiring the fee. Additionally, the fees are unrelated to the costs of maintaining the public rights of way. Franchise fees that charge a percentage of revenue are even more egregious as they are inherently unrelated to cost of maintaining the right of way.<sup>31</sup> The burden on the rights-of-way does not vary based on the price charged by the carrier to its customers, or even by the number of users of the site. Any such fees are not fair and reasonable, and thus are invalid under Section 253(a) and (c).

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<sup>31</sup> Mobilitee Petition p. 30-31. *See Bell Atlantic-Maryland, Inc. v. Prince George's County*, 49 F. Supp. 2d 805 (D. Md. 1999), vacated on other grounds, 212 F. 3d 863 (4th Cir. 2000).



- Large Northeastern city: City is demanding \$500 for attaching to city-owned structures, \$500 per attachment to 3rd party structures, and a 5 percent gross revenue fee. The city is requiring all new applicants wishing to deploy small cells to enter into this fee agreement. Other carriers with existing attachments have a more advantageous pricing structure not available to new applicants.
- Below are additional localities demanding gross revenue or franchise fees:

|           |      |
|-----------|------|
| West      | 6.0% |
| West      | 7.0% |
| West      | 7.0% |
| West      | 7.0% |
| West      | 7.0% |
| Northeast | 3.0% |
| West      | 3.5% |
| West      | 6.0% |
| Northeast | 5.0% |
| Northeast | 5.0% |
| West      | 5.0% |
| West      | 5.0% |
| West      | 6.0% |
| West      | 7.0% |
| West      | 7.0% |
| West      | 6.0% |
| West      | 6.0% |
| West      | 5.0% |
| West      | 5.0% |
| West      | 7.0% |
| West      | 6.0% |
| West      | 7.0% |

### **3. Unlawful Discrimination**

Local governments admittedly are in a bind when their long-standing practice of franchise fees on incumbent utilities comes into conflict with the Section 253 mandate of neutrality overlaid by the mandate that charges be “fair and reasonable” or when local governments get a notion that they can generate more money from latecomers than they did from

entities with existing contracts. The solution, however, is not to impose a franchise fee on competing or new providers as such action falls the “fair and reasonable” requirement. For example, one Northeastern city has required a 5 percent gross revenue fee in addition to \$500 per attachment for all entities entering into an agreement with the city to deploy small cells. At least two existing providers already have contracts with the city that impose lesser fees. The city is violating Section 253(c) because its charges are discriminatory and do not treat all carriers the same. A Midwestern city is attempting to increase the application fees for new sites even after it recently approved multiple sites that have already been installed at a lower rate.

### **C. Excessive Delays**

Some municipalities are causing excessive delays to small cell deployment. These delays happen in two ways. Some cities will not consider any siting applications until there is a master agreement with the city. The other type of delay is the post-application delay by violating the shot clock timelines.

Sprint and Mobilitie have tabulated the delays they have observed in reaching master agreements with jurisdictions across the United States. Mobilitie has sought access agreements in hundreds of jurisdictions. Of those, 343 have taken more than six months to reach agreement. Of those 343 jurisdictions, 75 have taken more than a year, 11 have taken more than 18 months, and two have taken more than two years. Some of the delay is certainly caused by negotiations over the rates the jurisdiction may charge, but it is not fair to attribute the delay to an applicant when the applicant is merely insisting on the “fair and reasonable” rates required by Section 253.

As an example of this type of delay, one large Northeastern city has been engaged in discussions about instituting an agreement since May 2016, and as of March 2017, no applications have even been reviewed or approved.

Below are some additional examples out of many to choose from showing the excessive delays in reaching an agreement to allow individual applications to be submitted:

- One jurisdiction in the Midwest was unresponsive for months, until recently when it responded to begin agreement negotiations with a fee of \$3,000 per facility.
- One jurisdiction in the Midwest was prolonging the process for over a year due to another infrastructure provider, but more recently it has accepted the agreement template and are working in a very slow moving fashion.
- One Western jurisdiction has delayed processing applications since July 2016, stating that the city must revise its template agreement and ordinance to address small cells.
- A city in the Midwest requested a large cash deposit before addressing an agreement, and then later refused to work with the company or discuss the proposed agreement.
- One Western jurisdiction requires a franchise agreement before considering applications, yet will not negotiate the terms of a franchise.
- One jurisdiction in Western United States has delayed in moving forward with an agreement or a process since July of 2016.
- One jurisdiction in the Northeast has been revising its franchise template for some time now and there is no clear deadline for when it will be completed.
- One jurisdiction in the Midwest has been taking time to develop an agreement template in order to begin agreement negotiations; no timeline from this jurisdiction was provided.
- One jurisdiction in the Northeast has been hesitant to enter into an agreement due to not wanting other competitors to engage in the jurisdiction as well.
- One jurisdiction in the West was in an ordinance re-write that caused initial delays, but since there have been stringent design standards and agreement requirements that continue the delays.
- One jurisdiction in the West has been delayed in providing an agreement template to proceed with negotiations on.
- One Western jurisdiction is waiting on a larger jurisdiction to finish its

draft agreement before proceeding to provide a draft agreement.

- One jurisdiction in the South has been slow moving on the agreement due to wanting to finalize siting prior to negotiations.
- A jurisdiction in the West caused initial delays in development of a process, and then, recently, made a request in its draft agreement for right-of-way fees contrary to state law.
- One Northeastern jurisdiction has delayed access to the ROW since May 2016 due to the lack of process in place to regulate wireless infrastructure in the ROW.
- One jurisdiction in the Midwest would not accept applications, began working with Mobilitie in May, decided in July that an ordinance amendment would be needed, informed Mobilitie in December that the ordinance would need a complete re-write, and since has notified Mobilitie that it will take another year at the earliest to complete.
- Four jurisdictions in Midwest have been engaged in a slow process; recent progress has been made, but averaging a year to make that progress.
- One jurisdiction in the West has delayed in moving forward with an agreement or a process since July of 2016.
- One jurisdiction in the Northeast has been unresponsive and any contact has been stalled.
- One jurisdiction in the Northeast has been extremely slow moving with the process and is not interested in new poles at this time.
- One jurisdiction in the Northeast will not entertain infrastructure deployment until there is a site built somewhere else in the state.
- One jurisdiction in the Northeast has been slow to respond in order to discuss deployment and appear uninterested in moving any quicker.
- One jurisdiction in the Northeast has had an unresponsive attorney who is arguing against an infrastructure company's right to access the ROW on behalf of a mobile carrier.

#### **D. Unlawful consideration of RF issues**

Some jurisdictions are unlawfully considering the effects of radiofrequency emissions even though Section 332(c)(7)(iv) states that “[n]o State or local government or instrumentality

thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."

One Southwestern city is requiring applicants to pay \$5,000 to fund the purchase of two RF monitors. Although this is not a direct regulation of construction based on RF emissions, Sprint's position is that RF considerations may not be taken into account at all by local governments as long as Sprint is complying with the Commission's RF requirements.

One Western city is requiring applicants to provide an RF study to all citizens within 1,000 feet of a proposed small cell site. Again, local governments may not factor RF issues into their application and zoning process as long as the applicant is in compliance with the Commission's RF rules. Indeed any consideration is wholly unnecessary since the Commission's Part 15 rules fully address issues relevant to RF design and emission. Not only are the complete structures required to comply with FCC rules as designed, but the individual components of the structures must also comply with all applicable rules. Finally, the cities have no jurisdiction whatsoever over RF emissions. Any attempts to modify compliant designs may have the effect of rendering them out of compliance.

#### **IV. Sprint's Proposed Solution to Excessive Infrastructure Fees, Delays, and Inability to Access Public Rights of Way**

Mobilitie presents an appropriate and fair approach to beginning the process to reform the small cell siting approval process. In fact, most of what Mobilitie proposes is already explicitly required by Section 253 but ignored by many state and local governments. But while the Mobilitie petition addresses the fee aspect of the problem, it does not address all of the access issues nor the delay issues. Sprint has been working with other industry members on presenting

legislative proposals across the country to state legislatures to attempt to make the small cell siting process more uniform, consistent and cost efficient. Sprint proposes below that the Commission should issue a declaratory ruling clarifying that these legislative proposals are correct interpretations of the requirements of Section 253(a) and (c) and provide a revised timetable that the Commission should adopt with the same authority it used to implement the shot clock under Section 332 and the deemed granted requirement under Section 6409.

**A. The Commission Should Adopt Mobilitie's Proposals**

Mobilitie asked the Commission to clarify three issues: the definition of “fair and reasonable”; what does it mean for local government to act in a nondiscriminatory manner as required by Section 253; and how can the Commission enforce the public disclosure requirement of Section 253(c).

**1. Fair and Reasonable—Direct and Actual Costs is Proper Standard**

The basic concept of fair and reasonable compensation is easily defined. It means that charges for rights of way application and access fees should enable a locality to recoup the costs reasonably related to reviewing and issuing permits and managing the rights of way. Additional charges or those not related to actual use of the right of way, such as fees based on carriers' revenues, are unlawful. Chairman Pai has advocated that the Commission explicitly preempt fees for right of way access that are not “fair and reasonable.”<sup>32</sup>

Fair and reasonable must be interpreted in light of the Commission's statutory mandate to encourage broadband deployment. Wireless services have become a basic essential service akin

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<sup>32</sup> Pai Speech at 7.

to the electric, water, and sanitation services. Wireless deployment cannot be a profit center for the municipality or a source of funds for subsidizing other municipal endeavors. Such an approach is fundamentally incompatible with “fair and reasonable.”

Nor should right of way fees be based on “market rates” by benchmarking to unreasonable fees assessed by other cities that are not based on the direct and actual costs of managing the right of way. Left unchecked by clear national standards, cities in one Southwestern state are benchmarking their fees with one another such that the fees in all of the major cities roughly mirror one another. No city wants to collect less than the others do but such an approach is logically flawed.

Fair and reasonable cannot be a “market rate” because there is no “market.” Local governments possess monopoly power over the public rights of way and other essential public infrastructure. Given that a carrier seeking to deploy in the rights of way has no alternative, the local governments can—and have been—extracting unjustified sums of money from carriers who have no choice but to pay what the municipalities demand if they want to serve customers in that area. The First Circuit’s opinion in *Puerto Rico Telephone v. Guayanilla* in 2006 illuminates why a “market price” approach is incompatible with Section 253(c): “The amount that other telecommunications carriers would be willing to pay tells us more about telecommunications providers’ resources and their desire to comply with local regulations than it does about why the fee chosen is “fair and reasonable compensation for the state or municipality.”<sup>33</sup>

The goal should be to have fees that reduce the cost of broadband expansion and speed

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<sup>33</sup> 450 F. 3d 9 (1st Cir. 2006).

the delivery of broadband alternatives. The public interest is best served by removing, as much as possible, any impediments to broadband expansion. It is inconsistent and inefficient to hand out federal and state financial incentives to expand broadband coverage under the Universal Service Fund and at the same time allow monopoly right-of-way holders to charge anything other than cost-based fees for the use of public rights of way. High fees, just like taxes, are recovered through retail rates that are paid for by the public. The rights of way are public property. It is nonsensical for the public to have to pay higher retail rates because a city wants to extract as much as it can for use of property owned by the very public required to pay higher retail rates. The public interest is best served with retail rates that are lower as a result of lower fees.

A municipality that is intent on maximizing the fees it charges is being shortsighted. Those municipalities would be serving their constituents better by charging less for right of way use because that will result in lower retail broadband rates. Constituents are best served by the expansion and improvement in broadband infrastructure not the extraction of every possible dollar from carriers and their customers. It is not uncommon for a municipality to charge fees that are below cost for services utilized by a large portion of the public, such as usage of the roads or public safety services. Broadband is now used by virtually everyone. The Act and the Commission placed cost-based compensation limits on ILEC interconnection rates, UNEs, collocation, pole attachments, and other subjects of telecommunications regulatory policy because it was in the public's interest to enable, not impede, competition.<sup>34</sup>

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<sup>34</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Aug. 8, 1996) ("Local Competition



Because a decree that “fair and reasonable” means “direct and actual costs” may not be self-effectuating, Sprint urges the Commission to adopt objective cost standards as described in the next section. Adopting the proposed standards will effectuate Mobilitie’s general proposals to limit fees to the direct and actual costs of managing the public rights of way.

## **2. Nondiscriminatory**

The Commission should adopt a declaratory ruling clarifying the application of Section 253(c) to discriminatory rights of way charges, and prohibiting charges that exceed those that were previously imposed on other carriers.

## **3. Public Disclosure**

Mobilitie’s proposal is straightforward and should be non-controversial as it is already required by 47 U.S.C. § 253(c).

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

The phrase “if the compensation required” is publicly disclosed” cannot mean only that the local government publish a rate sheet for new applicants that wish to use the public rights of way. Given that the rates must also be “competitively neutral and nondiscriminatory,” other entities must have access to records or contracts showing the compensation paid by other telecommunications providers, utilities, and right of way users to ensure that the rates and terms offered are “competitively neutral and nondiscriminatory.”

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Order”) at ¶ 620.

## **B. Nationwide Standards Under 332**

Sprint has worked with other industry members to press for a uniform system that creates a fair process that protects local government authority and public input over infrastructure siting, but streamlines the process so that carriers and infrastructure companies can deploy quickly when and where their customers are demanding additional capacity and faster data speeds.

Several states have already enacted legislation that is working, and the FCC should endorse the approach taken by these states. In 2016, Ohio and Kansas passed legislation that streamlines and makes uniform the local permitting process for small cells and limits the fees that can be assessed for permit applications and right of way usage.<sup>35</sup> In 2017, Virginia passed a similar bill, currently awaiting the governor's signature, that establishes a statewide, uniform, streamlined small cell siting process and limits application, right of way usage fees and attachment fees.<sup>36</sup> These laws appropriately and effectively address each aspect of the three-legged stool at issue in this proceeding—access, fee levels, and time frames. Its provisions should guide the Commission in its interpretation of the requirements of Sections 253 and 332(c).

### **1. Highlights of Sprint's Reform Proposal**

#### **a) Rates**

Effective regulation has rate provisions that are “fair and reasonable” as required under

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<sup>35</sup> 49 Ohio Rev. Code § 4939.01 et seq., available at: <http://codes.ohio.gov/orc/4939>; Kansas Statute 66-2019, available at [http://www.kslegislature.org/li\\_2016/b2015\\_16/measures/hb2131](http://www.kslegislature.org/li_2016/b2015_16/measures/hb2131)

<sup>36</sup> Virginia S.B. 1282, available at <https://lis.virginia.gov/cgi-bin/legp604.exe?171+sum+SB1282>

Section 253(c), but allow local governments to recover their costs of processing applications and managing the public rights of way. Carriers have proposed legislation that includes rate provisions for: (1) new poles installed by a wireless carrier or infrastructure provider; (2) application fees for attachments to structures owned by entities other than the local government; and (3) application and use fees for attaching to municipally owned structures, including both buildings and utility structures.

#### (1) Use of Right of Way for New Structures

Carriers have also proposed legislation that includes a provision for rates similar to that proposed by Mobilitie—charges for use of the public rights of way must be limited to the “direct and actual cost” of managing the right of way but goes further to provide a precise of measure of how those fees are to be determined.

The proposal has a cap of \$20 per pole for installations of the right of way, and lesser charges if the local government charges a smaller amount to other utilities:

An Authority may only charge a Wireless Provider a Rate or Fee for the use of the ROW with respect to the construction, installation, mounting, maintenance, modification, operation, or replacement of a Wireless Facility or Wireless Support Structure in the ROW, including Collocation in such ROW, if the Authority charges other Communications Service Providers; or publicly, cooperatively, or municipally owned utilities for the use of ROW. If an Authority is authorized by applicable Law to charge a Rate or Fee to those Persons, and does so, any such Rate or Fee for a Wireless Provider must be: (i) limited to no more than the direct and actual cost of managing the ROW; and (ii) competitively neutral with regard to other users of the ROW, including investor, Authority, or cooperatively owned entities. No Rate or Fee may: (i) result in a double recovery where existing Rates, Fees, or taxes already recover the direct and actual costs of managing the rights of way; (ii) be in the form of a franchise or other Fee based on revenue or customer counts; (iii) be unreasonable or discriminatory; (iv) violate any applicable Law; or (v) exceed an annual amount equal to \$20 times the number of Utility Poles or Wireless Support Structures in the Authority’s geographic jurisdiction on which the Wireless Provider has Collocated a Small Wireless Facility

## Antenna.

To some, a \$20 charge may, at first glance, seem low, but it must be seen in light of the statutory mandate under Section 253 that compensation for use of the public rights-of-way must be “competitively neutral and nondiscriminatory.” There are currently an estimated 160 to 180 million wood utility poles in the United States used by telecommunications carriers and electric utilities.<sup>37</sup> This does not include concrete or metal poles. These poles have been placed in the public rights of way for decades, often at little to no charge by the local government to the utility. Wireless carriers are seeking to deploy less than 0.1 percent of that number in the next few years. By seeking a fee of \$20, wireless carriers are not asking for special treatment but rather just the realization of the statutory mandate that charges be “competitively neutral and nondiscriminatory.” The FCC can rely on Section 706 for authority to impose such a cap as that section states that “the Commission ... shall encourage the deployment ... by utilizing ... price cap regulation ... or other regulating methods that remove barriers to infrastructure investment.”<sup>38</sup>

### (2) Collocation on Structures Not Owned by the Municipality

Sprint understands and supports local government’s right to issue permits for exterior collocation on structures owned by third parties. But Section 253 requires the rates be fair and reasonable, which Sprint believes are the actual and direct costs of processing the applications. Effective regulation would reflect this understanding, limiting fees to a reasonable amount, such

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<sup>37</sup> <http://www.utilityproducts.com/articles/print/volume-16/issue-06/product-focus/line-construction-maintenance/wood-utility-poles-and-preservative-choices.html>

<sup>38</sup> 47 U.S.C. § 1302(a).

as the charge for issuing a building permit for construction of similar scale. Carriers have proposed that:

An Authority shall only charge Fees for the actual, direct, and reasonable costs incurred by the Authority relating to the granting or processing of an Application. Such Fees shall be reasonably related in time to the incurring of such costs. Where such costs are already recovered by existing Fees, Rates, or taxes paid by a Wireless Provider, no Application Fee shall be assessed to recover such costs.

Total Application Fees, where permitted, shall not exceed the lesser of the amount charged by the Authority for: (i) a building permit for any similar commercial construction, activity, or land use development; or (ii) \$100 each for up to five Small Wireless Facilities addressed in an Application and \$50 for each additional Small Wireless Facility addressed in the Application.

### (3) Collocation on Structures Owned by Municipality

Municipalities own a huge array of facilities that are appropriate sites for small cells, ranging from traffic signals and street lights to traffic cameras to buildings to utility poles owned by the municipality itself or by municipally owned utilities. These structures are often superb locations to collocate small cells, and given that they already support other utilities, there is little additional aesthetic impact to the surrounding areas.

The Commission has a long track record of rulemaking to establish and enforce just and reasonable rates under Section 224 to govern the attachment of communications infrastructure to poles, ducts, conduits and rights-of-way owned by other utilities. While Sprint recognizes that Section 224 excludes poles and rights-of-way owned by local governments from its purview, the rates established by Section 224 under the “just and reasonable” requirement are helpful in defining what is “fair and reasonable” under Section 253. The legislation carriers have proposed will have separate sections for “Authority Poles,” which include traffic signals and street lights, and “Utility Pole for Designated Services,” which is a pole used for electricity or

communications cables. The rate for the Utility Poles for Designated Services—i.e. electric and telecommunications poles—should not exceed \$20 for wood poles and \$200 for metal, concrete or fiberglass poles.

The Rate to Collocate on Utility Poles for Designated Services may not exceed the annual recurring Rate that would be permitted under rules adopted by the FCC under 47 U.S.C. § 224(e) if the Rates were regulated by the FCC or (i) \$20 per year per wooden Utility Pole or (ii) \$200 per year per metal, concrete, or fiberglass Utility Pole, whichever is less.

These rates are in line with Commission mandated rates under Section 224. The Commission has seen protracted battles among incumbent carriers, competitive carriers, and cable companies over the applicable rate for their attachments. These rates typically range from \$6 to \$14 per pole per year, or a little more depending on the number of attachers.<sup>39</sup> Wireless carriers, though entitled by statute to the telecommunications rate under Section 224, would be happy with any of those rates as they are in many cases less than one percent of the amount demanded by the state or local government to attach to its infrastructure. The rate to collocate on traffic signals, street lights, and other similar structures would be the same rate as a utility pole, with the burden on the local government to justify its charges. The following language would be appropriate:

The Rate to Collocate on Authority Poles shall recover the actual, direct, and reasonable costs related to the Applicant's Application for and use of space on the Authority Pole. The total annual Rate for Collocations and any activities related to such Collocations shall not exceed the lesser of actual, direct, and reasonable costs related to the Collocation on the pole or (i) \$20 per year per wooden Utility Pole or (ii) \$200 per year per metal, concrete, or fiberglass Utility Pole, whichever is less. In any controversy concerning the appropriateness of a Rate for an Authority Pole, the Authority shall have the burden of proving that the Rates are reasonably

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<sup>39</sup> See *Petition for Reconsideration or Clarification of the National Cable & Telecommunications Association, Comptel and TW Telecom Inc.*, Docket No. 07-245, (June 8, 2011) at Attachment A.

related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period.

**b) Timelines**

The Commission should also detail reasonable timelines that give local governments a fair opportunity to review applications but do not overly burden carriers with excessive delays that prevent them from responding to the needs of their customers. Carriers have proposed a 60-day clock for collocation applications to reflect the miniscule impact that collocated small cells have on the surrounding area and the presumption that carriers should be able to deploy such cells quickly and with a minimum of regulatory red tape. The 2009 timelines were based on older macro-cell deployments and processes being performed at a time with less experience with wireless infrastructure deployment than today. Small cells are generally less obtrusive, and local governments are more familiar with how to manage the rights of way for wireless communications. Accordingly, timeframes can be shortened while still allowing for reasonable consideration by the municipalities.

Carriers have proposed a 60-day shot clock with a “deemed granted” remedy: “An Application shall be processed on a nondiscriminatory basis and deemed approved if the Authority fails to approve or deny the Application within 60 days.” A shot clock without a “deemed granted” provision at the end is of minimal value as enforcement is difficult and a costly burden for the industry, the judicial system, and on the citizens of the offending cities. Unfortunately, some municipal authorities can and do ignore the deadlines without repercussions. Chairman Pai has stated that the shot clock rules in 332(c)(7) need “teeth.”<sup>40</sup>

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<sup>40</sup> Pai Speech at 2.

Sprint agrees with the Chairman’s proposal that inaction by government on an application constitutes “deemed granted” acceptance of the application: “[I]f a local government does not act on a wireless facilities application by the end of the FCC’s shot clock, that application would be considered approved and an ISP could start building right away.”<sup>41</sup>

## **2. FCC Should Acknowledge These Legislative Provisions as the Best Interpretations of 253 and 332**

Sprint supports Mobilitie’s petition and posits that the Commission should adopt the legislative language discussed above as the best way to flesh out the details of Mobilitie’s general approach. Sprint has already detailed above why the Commission has the authority to implement fee caps and shot clocks with deemed granted remedies to implement Congress’ mandate to the Commission in Sections 253 and 332 to facilitate the rapid deployment of mobile services.

Sprint has advocated and will continue to advocate for states to implement effective legislation. Nevertheless, Sprint thinks that federal action is needed for several reasons. Nationwide uniformity is an immense benefit given the need for wireless carriers to provide nationwide coverage in thousands of jurisdictions. Overlapping and contradictory legal requirements increase costs with little corresponding benefit. It would be consistent with FCC treatment of other pro-competitive decisions stemming from the passage of the Telecom Act to decide this issue at the national level as opposed to allowing thousands of municipalities to decide on their own. The FCC appropriately reasoned in the First Report and Order that national

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<sup>41</sup> Remarks of FCC Commissioner Ajit Pai at the CTIA Wireless Foundation Smart Cities Expo, Nov. 2, 2016, at 7.



rules would reduce costs and provide uniformity across jurisdictions.<sup>42</sup> Congress has required the Commission to remove barriers, and this is best accomplished through a consistent nationwide process rather than piecemeal action.

Additionally, a national framework provides direction and clarity to state and local government authorities responsible for managing public rights-of-way. Many authorities are spending a long period of time and significant resources in an effort to establish new policies and practices for small-cell siting. A nationwide policy will eliminate the need for each local authority to develop its own set of rules.

### **C. Responses to Other FCC Proposals and Questions**

#### **1. Batching**

The commission's questions regarding the time required to process a small cell application based on whether the application is for an individual cell or a batch of cells fails to recognize the nature of current deployments. The Public Notice suggests that it may be appropriate to impose a longer timetable for local government action when applications are submitted in batches.<sup>43</sup> Carriers are unlikely to be submitting individual small cell applications. Small cell deployments blanket an area with tiny antennas that have a limited radius. While future deployments may occur in smaller batches or even individual applications to fill small gaps, the current deployments that Sprint is conducting involve many sites in each jurisdiction.

The very nature of the applications leads to systemic review in batches. The deployments

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<sup>42</sup> Local Competition Order ¶¶ 216, 308 and 309.

<sup>43</sup> Public Notice at 12.

will most likely be using the same equipment at each site and the sites will be clustered. The same considerations are likely to affect multiple sites. Accordingly, the burden of processing multiple sites in one application is not appreciably higher than processing one site at a time, and the timetables should be the same to reflect that. Setting a longer timetable for batch applications would be counterproductive as carriers would likely submit individual applications to expedite review. Sprint supports batched applications to the extent that it lowers total application fees and does not expand the time for a municipality to act on the applications, but the imposition of a batching requirement or extending deadlines when submitted in batches would be counterproductive.

## **V. Other Infrastructure Deployment Barriers**

### **A. Tribal Historic Review Costs**

The costs of the Section 106 Process for tribal historic review under the National Historic Preservation Act have been rising precipitously over the last few years. Sprint supports the efforts of the federal government and the FCC to preserve sites of religious, historic, and cultural significance to Indian tribes. But the good intentions to protect important sites have led to spiraling costs at sites with no chance of having an adverse impact on a site that meets the criteria under the FCC's Nationwide Programmatic Agreement of eligibility for inclusion on the National Register of Historic Places.

The FCC's rules under the NHPA were born at a time when mobile carriers were building tall towers in undisturbed soils. Now, carriers are installing small poles, primarily in already disturbed rights of way or collocating on existing structures. Many are along highways in soil that was graded and regraded to build those very highways, sewers, storm drains, and to bury gas lines, electrical lines, and communications conduit. Under the Commission's questionable

definition of “federal undertaking,” electric and wireline telecommunications providers do not pay the tribes to assess the impact of their deployment of utility poles, but wireless carriers must do so—even if they use the exact same type of pole with the exact same ground disturbance. A carrier can deploy a Wi-Fi transmitter on a new pole without invoking the tribal historic review process, but if that same pole is used for licensed mobile broadband or voice services, tribal review is required.

The costs of tribal consultation are becoming prohibitive and are unnecessarily diverting capital from deployment. Sprint’s costs per site have increased 14-fold in the last six years, from less than \$500 per site in 2011 to more than \$6,300 today. The FCC imposes no limits on the amount of fees tribes can demand nor on the geographic areas over which they can assert the right to be consulted under FCC rules. Some tribes are now requiring as much as \$1,750 to conduct a historical review. A tribe from Northern Wisconsin is requiring money to assess the impact on its cultural heritage of a rooftop antenna on a hospital in Long Island, New York. Given the lack of constraints, a carrier like Sprint that is planning on deploying tens of thousands of sites at an average of \$6,300 per site is looking at a total cost of hundreds of millions of dollars for tribal historic consultation—all of which could go to network deployment rather than a bureaucratic process that is unlikely to identify an adverse effect at a single eligible Historic Property.

The Super Bowl again provides an excellent example of the resources being drained from broadband deployment. Sprint recently deployed an array of small cells across Houston to upgrade its network in preparation for the crowds descending on Super Bowl LI. Tribes requested \$7,535 in fees to review each site, with most tribes requesting the fee without even a cursory investigation that would have shown the infinitesimal likelihood that their review would

demonstrate this to be a site eligible for listing on the National Register of Historic Places. The stadium construction itself did not involve any historical consultation with tribes under Section 106 as stadium construction is not a federal undertaking, but carriers building an antenna in the parking lot are obligated by FCC rules to engage in the Section 106 process. One tribe requesting fees for a new pole in the NRG Stadium parking lot (pictured on page 8 of these comments) has its historical roots ranging from Montana to Oklahoma, but Sprint can find nothing to show that this tribe has any connection to the Houston area sufficient to justify its demand for consultation fees.

All of these costs and regulatory burdens might be justified if it was an effective way of protecting tribal heritage. But it's not. Since the current tribal consultation system was enacted by the FCC in 2004, Sprint has not had a single substantive consultation with tribes over adverse impacts on Historic Properties despite thousands of tower and antenna project notifications to tribes using the FCC's Tower Construction Notification System and paying millions of dollars in "consultation" fees. PTA-FLA filed a petition for declaratory ruling with the FCC in 2016 in which it noted that it "or its affiliates have sent out thousands of notices through the TCNS system over the years and have never received a single indication that any Indian burial ground or other sacred place was implicated."<sup>44</sup> Crown Castle, the nation's largest provider of wireless infrastructure, stated that "Crown Castle has never received any negative commentary from any tribe throughout its history of TCNS filings."<sup>45</sup>

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<sup>44</sup> Petition for Declaratory Ruling, PTA-FLA, Inc., at 6 (May 3, 2016).

<sup>45</sup> Comments of Crown Castle, WT Docket No. 15-180, at 3 (Sept. 28, 2015).

Sprint is open to conversations with the FCC and with tribal nations on how to reform the system to protect areas that are truly sites of historic, religious, or cultural significance in a manner that is not an undue financial burden on the wireless industry and their customers. But wireless antenna and tower construction is an infinitesimal fraction of the total ground disturbed across America to build houses, roads, shopping centers, office buildings, stadiums, sewers, and the countless other aspects of modern life. But of those building projects listed in the previous sentence, only wireless carriers have to pay tribal nations to assess the impact of the construction on historic and religious sites.

Sprint believes the FCC can take action to rein in these fees without a rulemaking proceeding, but to the extent that the FCC does issue a Public Notice or Notice of Proposed Rulemaking on the subject, it must ask the tough questions about the benefits of the current process: How many times has the TCNS consultation process led to a determination of an adverse effect on an eligible Historic Property? That is the numerator. And the denominator is “How many times has a tribe requested consultation through TCNS? And received a fee?” By gathering this data, the Commission can measure the effectiveness of a process that has massive costs.

## **B. NEPA**

Sprint supports strong environmental protections and works diligently to minimize the effects of our business on the environment.<sup>46</sup> Sprint carefully considers the effects on the environment in planning its network deployment and seeks to deploy infrastructure in a way that

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<sup>46</sup> <http://goodworks.sprint.com/planet/>

minimizes any negative environmental effects.

The National Environmental Protection Act has been interpreted by the FCC to require all new sites outside rights of way and new sites more than 20' or 10 percent taller than existing structures within a right of way to screen for environmental effects under Section 1.1307 of the Commission's rules. This screen costs approximately \$2,000 per site.

Over the last several decades, Sprint estimates that it has done NEPA checklists for 20,000 to 30,000 sites. Of those sites, approximately 250 potentially implicated one of the criteria in Section 1.1037, thereby necessitating the preparation of an environmental assessment that costs an additional \$1,300. Most of those environmental assessments were for historic preservation concerns by state historic preservation officers under Section 1.1307(a)(4) because the site was in or near a Historic District or Historic Property. Every single one of those environmental assessments resulted in a finding of no significant impact. Accordingly, Sprint has never been required by NEPA to prepare an environmental impact statement for tower construction.

The Commission's NEPA rules have required Sprint to spend tens of millions of dollars to investigate a minimal likelihood of harm. Again, Sprint supports strong environmental protections and ensures that its deployments do not adversely affect the environment, but the Commission's rules impose huge costs on network deployment with little to nothing in the way of corresponding benefits. Sprint encourages the Commission to revisit its environmental rules under NEPA to reconsider the scope of the categorical exemptions by exempting all structures in a right of way under 125 feet from the NEPA requirements.

## **VI. Conclusion**

Sprint requests that the Commission fulfill its statutory mandate to encourage broadband

deployment by requiring state and local governments to charge their direct and actual costs and act on applications within a reasonable period of time pursuant to Sections 253 and 332(c) of the Act. To do so, the Commission should:

- Declare that mobile carriers and infrastructure companies have the right to access public rights of way under Section 253(a) as contrary rules or regulations have the effect of prohibiting the provision of service and are therefore preempted by Section 253(d).
- Declare that application and annual fees required by state and local governments for small cell deployments must be fair and reasonable. The fee for new support structures in the right of way is capped at \$20. The permitting fee for small cells or DAS, as defined in the 2014 Infrastructure Order, for attaching to structures owned by third-parties is limited to direct and actual costs of processing the application and shall not exceed the cost for a comparable building permit or \$100, whichever is lower. Finally, the annual fee for attaching small cells or DAS to city-owned infrastructure may not exceed \$20 for attaching to wood utility poles or \$200 for metal, concrete, or fiberglass utility poles, traffic signals, or streetlights.
- Declare that a “reasonable period of time” under Section 332(c) to act on small cells or DAS applications, as defined by the Commission in the 2014 Infrastructure Order, is 60 days for collocations. A failure to act within the time period results in a “deemed granted” approval of the application.
- For jurisdictions without a process in place for small cell or DAS applications, the shot clock nevertheless begins to run when the applicant submits the basic

information about the proposed site, including proof of delivery, that is consistent with other jurisdictions that are accepting applications or previous submissions prior to the moratorium.

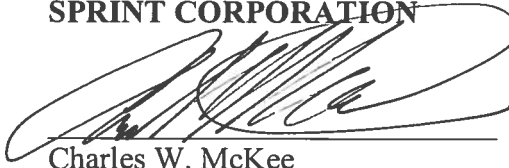
- Finally, the Commission should reiterate the requirements under Section 253 that jurisdictions cannot discriminate among carriers or types of carriers and that contracts and pricing terms must be publicly disclosed.

For the reasons articulated above, the Commission must act quickly to address the costs and delays that local governments impose on carriers actively deploying small cells. Sprint is building now, and every day that goes by that Sprint is subject to unreasonable fees by state and local governments means that fewer small cells will be built and fewer Americans will enjoy the benefits of faster mobile broadband speeds.



Respectfully submitted,

**SPRINT CORPORATION**

A handwritten signature in black ink, appearing to read 'C. McKee', is written over a horizontal line.

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March 8, 2017

